

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-888V

UNPUBLISHED

THOMAS BIERBAUM,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 22, 2021

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*David John Carney, Green & Schafle LLC, Philadelphia, PA, for Petitioner.*

*Ida Nassar, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On July 22, 2020, Thomas Bierbaum filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he suffered a Table Injury – Shoulder Injury Related to Vaccine Administration (SIRVA) – as a result of his October 11, 2018 influenza (“flu”) vaccination. Petition at 1, ¶ 18. Petitioner further alleges that the vaccine was administered within the United States, that he suffered the residual effects of his injury for more than six months, and that there has been no prior award or settlement of a civil action on his behalf as a result of his injury. See Petition at 1, ¶¶14, 17-18. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On November 19, 2021, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, Respondent indicates that

[m]edical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services ("DICP") have reviewed the petition and medical records filed in this case. It is [R]espondent's position that [P]etitioner has satisfied the criteria set forth in the Vaccine Injury Table ("Table") and the Qualifications and Aids to Interpretation ("QAI"). That is, [P]etitioner had no relevant history of pain, inflammation, or dysfunction in his left shoulder; his pain and reduced range of motion occurred within 48 hours of receipt of an intramuscular vaccination; his symptoms were limited to the shoulder in which the vaccine was administered; and no other condition or abnormality was identified to explain his symptoms. 42 C.F.R. §100.3(a), (c)(10).

*Id.* at 6. Respondent further agrees that "[P]etitioner has satisfied the statutory requirement that [P]etitioner's injury lasted for at least six months as required" by Section 11(c)(1)(D)(i). *Id.*

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master